IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.471 of 2013

==

1. Jai Ram Choudhary
2. Lilawati Devi W/O Sri Jai Ram Choudhary. Both r/o Village- Kembua, P.O.- Nav Garh, P.S.- Amash, District- Gaya.

... ... Appellant/s

Versus

1. Shashi Kant and Anr. S/O Late Nand Kishore Mishra. R/O Village and P.O.- Hurka, P.S- Tilouthu, District- Rohtas.
2. The Oriental Insurance Company Ltd., Through Its Branch Manager, Branch Officer, Sasaram G.T. Road, Near New Bata Rajlakhan Market, Sasaram.

... ... Respondent/s

==

Appearance :

For the Appellant/s	:	Mr. Mahesh Prasad II, Advocate Mr. Rewti Kant Raman, Advocate
For the Respondent/s	:	Mr.

==

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 01-04-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under Section 173 of the Motor Vehicle Act, against the judgment and award dated 23.03.2013/13.05.2013, respectively, passed by the learned 1st Additional District Judge-cum-Motor Vehicles Accident Claims Tribunal, Rohtas at Sasaram in M.V. Claim Case No.137 of 2011.

3. The claimants who are parents of the victim of motor vehicle accident are not satisfied with the quantum of award of compensation of *Rs.4,45000/-* against the claim of *Rs.8,00,000/-* made by the Motor Accident Claim Tribunal, Sasaram on 23rd March, 2013 in M.V. Claim Case No.137 of 2011. Hence, this appeal.

4. The case and claim put forward before the Tribunal by the appellants was that deceased *Jugesh Choudhary* was their son aged about 20 years. He was a *Khalasi* by profession in a private company. On 17.07.2011, the deceased along with another was going on a motorcycle. As the motorcycle reached near *Tarachandi Dham* on the *Grand Trunk Road* near *Sasaram*, a rash and negligent Bolero vehicle bearing *Registration No.BR26C/5505* dashed against the motorcycle and both the riders, including *Jugesh Choudhary* died. The vehicle was insured with the *Oriental Insurance Company Limited*. At the time of death the deceased was earning *Rs.5200/-* per month and was helping to his parents also, as he was a bachelor.

5. During oral evidence before the Tribunal, the appellants stated that the deceased was a Supervisor in a company. However, no documentary proof of the date of birth or educational qualification of the deceased was brought on the record. There are income tax returns said to be filed by the deceased on 14.03.2011 for the assessment years *2009-2010* and *2010-2011*.

The Tribunal disbelieved the same for the reason that the same were filed on the same day for two different financial assessment years showing no tax payable, as such they were created for the purpose.

6. The challenge of the award is on the ground that correct income of the deceased has not been taken into consideration for ascertaining the just loss of dependency, nor the appropriate multiplier has been used considering the age of the deceased as 20 years. Further challenge is on the ground that nothing has been awarded for future prospect of the deceased.

7. Learned counsel for the respondents submits that the Tribunal has accepted the income of the deceased as stated in the claim petition. The subsequent variation is based on oral evidence and only the income tax return without any support of proof of documentary evidence of the actual occupation of the deceased. Therefore, it cannot be said that the Tribunal has acted against the record.

8. After hearing the parties, I find that the learned Tribunal has wrongly taken *Rs.5,000/-* as per month income of the deceased, which should have been *Rs.5,200/-*, as claimed in the claim petition. Since the deceased was a bachelor, deduction of 50% was permissible, which has been deducted by the

Tribunal. Thus, the loss of dependency is calculated at Rs.2600x12 months equal to *Rs.31200/-* per year. The aforesaid amount requires to be added with 40% for loss of future prospects of the deceased, in view of the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Setthi*** reported in ***2017 (4) PLJR 261***, as the deceased was self employed person. The total amount on addition of 40% in the aforesaid yearly income comes to *Rs.43680/-*. The appropriate multiplier would be of 18 considering the age of the deceased and the Tribunal has wrongly applied 15 considering the age of the parents. After multiplication the amount comes to *Rs.7,86,240/-*.

Each of the appellant shall be entitled for *Rs.50,000/-* for loss of Filial Consortium and *Rs.15,000/-* each for funeral expenses and loss to the estate. Thus, the total final compensation is calculated to *Rs.8,56,240/-*.

9. This Court is not inclined to interfere with the rate of interest awarded by the Tribunal which is 6% from the date of filing of claim petition.

10. Learned counsel for the appellants has relied upon the judgment of the Hon'ble Supreme Court in ***United India Insurance Company Limited Vs. Indiro Devi and Others***

reported in ***2018 (3) T.A.C. 350 (S.C.)*** for his contention that the Tribunal should have taken into consideration the income tax return of the deceased for taking income of the deceased to calculate loss of dependency.

11. In my view, the claimants have specifically put forward a case before the Tribunal that the deceased was a *Khalasi* at the time of his death and was earning *Rs.5,200/-* per month. Two subsequent documents produced, which apparently has no reliability, as return of two financial years were filed on the same day. This Court is not going to interfere with the finding of the Tribunal in this regard.

12. With the aforesaid modification, the appeal is ***partly allowed*** and ***partly dismissed***.

13. The amount already paid to the claimants by the insurer shall be adjusted against the final payment.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.04.2019
Transmission Date	04.04.2019